United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 19, 1997

TO : Martin M. Arlook, Regional Director
Region 10

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Transport Workers Union, Local 526
(Johnson Controls, Inc.)
Case 10-CB-6808

This case was submitted for advice on issues of disclosure and chargeability arising under Beck.[1]

First, we conclude that Local Union 526 (the Local) unlawfully failed to provide objectors with financial information concerning the Georgia AFL-CIO. The Local remitted $1787.50 of dues to that organization and claimed those dues as fully chargeable. The Board has held that one of the financial disclosure obligations of a union under Beck includes the providing of summaries of the major expenses of affiliated organizations to which the union remits union-security collected dues.[2]

The Local asserts that it need not provide financial information concerning the Georgia AFL-CIO because dues remitted to that affiliate constitute a de minimis amount of the Local's total expenditures. We note, however, that there is no contention that the Local's remitted dues, together with similar remitted dues from other Locals, constitute a de minimis amount of income to the Georgia AFL-CIO, the organization receiving these types of union dues. Absent evidence that these dues are de minimis in toto, i.e., both as expenditures of the unions and also as income to the receiving affiliate, we would not dismiss this otherwise meritorious allegation on the ground that further proceedings would not effectuate the policies of the Act. Accordingly, the Region should issue complaint, absent settlement, alleging that the Local's financial disclosure unlawfully failed to provide a breakdown of the expenses of

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[1] CWA v. Beck, 487 U.S. 735 (1988).

[2] See California Saw and Knife Works, 320 NLRB 224, 239 (1995).

the Georgia AFL-CIO to which the Local remitted a portion of its union-security collected dues.

We next conclude that the Local's disclosure was unlawfully deficient because its excessive use of "mixed categories" constituted a failure to properly list the major categories of both its own expenses and those of the International Union to which the Local remitted a portion of union-security collected dues.

The financial disclosure for the International lists fifteen categories of expenses. Almost all of the listed categories - thirteen of the fifteen - are "mixed categories" which must be further broken down into chargeable and nonchargeable amounts. The two largest listed categories are "mixed", viz., "Salaries" expenses of $2.7 million and "Servicing and Organizing" expenses of $2.6 million. These two "mixed" categories alone amount to more than 50% of the International's total expenditures. The financial disclosure for the Local's expenses lists seven "mixed" categories out of the total of 18 categories. However, the "mixed" categories comprise $127,700 of the Local's total expenses of $162,700. Therefore, the totaled "mixed" categories amount to over 78% of the Local's total expenditures.

The Board has addressed a union's use of "mixed" category expenses noting "the potential for unlawful manipulation by a union hiding nonchargeable expenses..."[3] The Board thus sanctioned only "the *limited* use of mixed categories" (emphasis in original) noting the impracticality of providing all backup data and the slight burden imposed upon objectors to challenge the union's calculations for such mixed categories.[4]

We conclude that both the Local and the International unlawfully placed the majority of their respective expenditures into "mixed" categories. In our view, this is

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[3] California Saw, supra at 240.

[4] The Board expressly adopted the public sector standard for disclosure in this regard and relied upon court decisions in this area including, for example, Dashiell v. Montgomery County, MD, 925 F.2d 750 (4th Cir. 1991). In that case, the court approved a disclosure of 35 categories, where the vast majority, or 28 categories, consisted of either wholly chargeable or nonchargeable expenses.

not a "limited" use and improperly placed on the Beck objectors the burden of challenging the calculations for major portions of expenditures as well as for the most important expenditures. Accordingly, the Region should issue complaint, absent settlement, alleging that the Local's financial disclosure unlawfully failed to properly provide a breakdown of expenditures into major categories of expenditures.

We next conclude that the Local unlawfully failed to prorate some of its overhead expenses into chargeable and nonchargeable amounts. We note that the Local did prorate a $5800 overhead expense entitled "rent, light, heat." However, the Local had remaining overhead expenses of around $8000 which it inexplicably did not similarly prorate.[5] There is no ostensible reason for not prorating all overhead expenses used in support of nonchargeable activities. Accordingly, the Region should issue complaint, absent settlement, alleging that the Local unlawfully failed to prorate all of its overhead expenses into chargeable and nonchargeable amounts.

We next conclude that the Local's Beck system unlawfully provided that Beck objections be made "by individual employees; no petition objections will be honored." The Board has held that a union requirement that individual objections be mailed in separate envelopes, rather than in a single common envelope, amounted to an unlawful burden on the objection process.[6] In so holding, the Board rejected the argument that the individual envelope requirement was necessary both to prevent mass objections and also to ensure that objections were an act of individual conscience. We view the instant bar against objection petitions in the same light, i.e., it imposes an unnecessary impediment or burden on the objection process with no substantial justification. Accordingly, the Region should issue complaint, absent settlement, alleging that the Local's Beck system unlawfully barred the filing of objection petitions.

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[5] These items included some substantial expenses such as $3546 for "Office Supplies, Postage"; $2268 for "Equipment Rental"; and $1814 for "Telephone,Telegrams."

[6] California Saw, supra at 236-37.

[*FOIA Exemptions 2 and 5*

[7] .]

With respect to all the other allegations, we agree with the Region. Specifically, the Local's categories of major expenses are not vague and do not improperly fail to break down expenses into functional descriptions; the International's claiming of legislative and lobbying expenses "to the extent permitted by law" was not an unlawful disclosure;[8] the Local's Beck system unlawfully provided for a limited January window period for the filing of objections as to individuals who resign their Union membership after the expiration of the window period; and finally, the Local may lawfully require that objector's must pay their own personal expenses during the arbitration of challenges, but may otherwise voluntarily offer to share the expenses of the arbitration proceeding itself.

B.J.K.

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[7] [*FOIA Exemptions 2 and 5*

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[8] See also Transport Workers Local 525 (Johnson Controls World Services, Inc.), Case 12-CB-3552, et al, ALJD(ATL)-15-94, slip Op. pp. 28-32, dated June 3, 1994, where the ALJ considered claimed expenses in this identical category for an earlier period. The ALJ noted that the International represented some public sector employees for whom lobbying expenses may well be chargeable. The ALJ then reviewed the expenses and found all of them to have been chargeable.